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September 12, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Federal Communications Commission
Office of the Secretary
1919 M Street, N.W.
Washington, D.C. 20554

Dear Sir:

Enclosed herein is an original and four (4) copies of Comments, submitted on behalf of Maritel, formerly WJG Maritel Corporation, for consideration in the Notice of Proposed Rulemaking, *In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No.94-54, RM-8012.

If any questions should arise related to this matter, please contact the undersigned counsel.

Sincerely,

Susan H.R. Jones

Enclosure

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**Before the**

# FEDERAL COMMUNICATIONS COMMISSION

**Washington, D.C.**

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OFFICE OF SECRETARY

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| **In the Matter of** | ) | |
| **Equal Access and Interconnection** | ) | **CC Docket No. 94-54** |
| **Obligations Pertaining to** | ) | **RM-8012** |
| **Commercial Mobile Radio Services** | ) | |

COMMENTS OF
MARITEL

Maritel, formerly WJG Maritel Corporation, by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission") hereby submits its comments in response to the Notice of Proposed Rulemaking ("NPRM")[1/] adopted in the above referenced proceeding designed to address whether equal access obligations should be imposed upon commercial mobile radio service ("CMRS") providers, and whether the FCC should implement a regulatory structure governing the interconnection of service provided by local exchange carriers (LECs) to CMRS carriers.

## I. Introduction

WJG is one of the largest providers of public coast station services in the United States. Its stations cover the Gulf of Mexico, the Southern Atlantic Coast, and U.S. inland waterways. Maritel's present inland waterway network serves most areas from Baton Rouge, Louisiana to Chicago, Illinois. Its southern Atlantic system serves

[1/] Notice of Proposed Rulemaking, *In the Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, RM-8012, ____ FCC Rcd ____ (1994); Order, *In the Matter of Equal Access and Interconnection Obligation Pertaining to Commercial Mobile Radio Service, Motion for Extension of Time*, CC Docket No. 94-54, RM-8012, released August 11, 1994.

most major markets from Morehead City, North Carolina to the Florida Keys. The network consists of 67 transmit locations, each interconnected to one of three control switching offices located in Gulfport, Mississippi; Memphis, Tennessee and Hollywood, Florida. Public coast stations, regulated under Part 80 of the Commission's Rules, provide interconnected common carrier public correspondence telecommunications and data services to sea-going vessels, barges and recreational boaters on frequencies designated for VHF maritime radio. As providers of for-profit, interconnected communications service to a substantial portion of the public, public coast stations have been recently reclassified as CMRS providers. Therefore, Maritel welcomes the opportunity to participate in this rulemaking proceeding.

## II. Equal Access Obligations Should Be Imposed Only Where Market Dominance Demands It.

As the Commission notes in its NPRM, the impetus underlying the original equal access obligations -- the requirement that LECs permit equal access for their local telephone customers to all long distance carriers -- was to promote competition among the long distances carriers entering the market after the break-up of the AT&T monopoly. Promoting competition was viewed as an antidote to AT&T's monolithic market power. Some CMRS providers, such as cellular providers linked with a long distance carrier or a LEC, possess market power sufficient to warrant the need for equal access requirements. However, there is not necessarily the type of market dominance among the broad range of CMRS providers as was held by pre-divestiture AT&T. Many CMRS providers are struggling small businesses, entrepreneurs in emerging technologies, and operators in niche markets. The costs of complying with equal access requirements for these small businesses far outweigh the advantages or benefits to consumers. Accordingly, the universal imposition of equal access obligations on all CMRS providers at this juncture would not serve the public interest.

### A. Some CMRS Providers Lack the Requisite Market Power to Comply With Equal Access Obligations

The "market" for public coast stations is the universe of customers who request landline interconnected service from their maritime vessels. Public coast stations exert virtually no market power over these customers. During the last few years, public coast stations have experienced intense competition from cellular providers who are able to offer contiguous coverage on inland waterways, tidewater areas, the Great Lakes, and on coastline waters up to ten miles off the United States shore lines. The emergence of cellular competition in the public coast station industry has been recognized by the Commission: "cellular radio offers increasingly competitive service that is supplanting the use of public coast stations."[2/]

The rise of cellular services in this market has negatively affected Maritel's public coast stations along the southeast United States coast line, the Gulf of Mexico, and inland waterways. Maritel's business in the Florida market has declined forty (40) percent during this past season. Recognizing the competitive threat of cellular, Maritel increased its coverage and offered improved service compared to the previous year. Its loss in revenue is directly due to the growth of cellular providers.

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2/ Notice of Proposed Rulemaking and Notice of Inquiry, *In the Matter of Amendment of the Commission's Rules Concerning Maritime Communications* (hereinafter "Amendment of Maritime Rules"), 7 FCC Rcd 7863, 7870, ¶ 35, (Pri.Rad.Bur. 1993).

In light of its weakened position in the market, Maritel asserts that it, and public coast stations in general, should not be subject to equal access obligations. Maritel currently has an exclusive carriage agreement with one long distance carrier. Based upon anticipated calling volume, Maritel is able to secure the lowest possible long distance rates for calls originating from its stations, and in turn, it passes on those savings in costs to its customers. Maritel's motivation to pass on the savings to consumers, rather than to increase its own profits, is prompted by the need to compete in a market dominated by other, competitive and more dominant services.

If Maritel is required to comply with equal access obligations, its present business practice of passing on savings to customers will be reversed. Costs will rise and the customers will bear the burden in higher long distance charges. Not only will Maritel no longer be able to negotiate lower long distance charges based upon volume, but the technical costs in implementing the software upgrades, in addition to providing and maintaining the multiple switches necessary to ensure access to multiple long distance carriers, will drive the costs up as well. In light of the *increased* costs associated with required equal access, imposing such obligations on small CMRS operators, or those with weak market power such as public coast stations, would be contrary to the public interest. Accordingly, Maritel strongly urges the Commission to impose equal access obligations on only those CMRS providers with a sufficient market power to ensure that equal access obligations *benefit* the consumer, rather than *harm* the consumer by resulting in service offered at higher prices.

### B. The Commission Should Adopt Objective Guidelines to Determine When Equal Access Obligations Ought to Be Imposed.

Maritel proposes that the Commission adopt an objective benchmark to determine when the market power of a CMRS provider is sufficient to warrant imposing equal access obligations. Maritel proposes that those obligations be imposed when a CMRS provider engages in diversification or cross-ownership with a LEC or long distance carrier, or likewise, when a LEC or long distance carrier owns a controlling share in a CMRS company. This proposal would impose equal access requirements on those CMRS providers which benefit from their relationship to the LEC or long distance carrier, but not on other, smaller CMRS providers with no such advantageous relationship.

This proposal is consistent with the original intent underlying the equal access obligations: to ensure that the established landline carriers would not improperly discriminate against smaller, emerging carriers.

## III. A CMRS Provider Should be Permitted to Offer Broad Mobile Service Without Boundaries or "Hand-Off" Requirements.

Under current Commission rules, a LEC is not permitted to carry traffic outside of its intraLATA service area. Once a call crosses that boundary, the LEC must hand-off the call to a long distance carrier. In this NPRM, the Commission asked whether similar service areas or boundaries should be adopted with respect to

CMRS traffic and a CMRS provider's requirement to hand-off a call to long distance carrier.

Maritel strongly opposes the adoption of any service area definitions or boundaries for the purposes of limiting service coverage and capabilities by CMRS providers. Requiring CMRS providers to hand-off calls to long distance carriers is consistent with the efficient provision of mobile communications services. For landline providers, such as LECs, the location where a customer is initiates a call, and the determination of whether the call will cross LATA boundaries is relatively simple. However, for many mobile communications providers, service is not defined by LATA boundaries. Accordingly, some calls will be initiated inside the LATA most closely associated with the carriers coverage area, while others may be initiated outside the area. It is virtually impossible for Maritel to determine the precise location from where a call is initiated. Unlike some CMRS providers, such as cellular carriers, public coast station coverage is not defined by geopolitical boundaries. Therefore, determination of which calls cross arbritray boundaries, for the purposes of imposing carriage obligations, is impossible.

Further, for Maritel, and many CMRS providers, the requirement to hand-off a call every time it crosses an intra-LATA boundary would pose technical difficulties that would require the redesign of an entire transmitting system. Maritel currently transmits long distance calls by routing a request for service from the customer's boat, to a relay transmitting station, to one of three control stations, where the hand-off to the contracted long distance carrier is made. It is generally the case that the radio transmission between the boat and the relay point crosses LATA boundaries. In addition, the dedicated leased lines employed by Maritel to transport calls between the relay point and the control station also cross LATA boundaries. To require a hand-off at each point, therefore, would require a complete re-design of Maritel's operating system. Such redesign of the radio transmission segment of the call would impose costs so excesssive that Maritel would no longer be able to stay in business. Redesign of the dedicated line transmission portion of the transmission between the relay point and the control stations would double Maritel's cost to operate the service. Accordingly, Maritel is simply not financially able to fulfill the obligations suggested by this proceeding and the imposition of such requirements would be fiscally devastating.

Moreover, Maritel asserts that adoption of such rules would undermine the advantages and improvements of service capabilities and options now emerging with new technologies. As expansion and innovative uses of technologies increase, and CMRS operators grow broader wireless coverage, it is counterproductive to require that a customer engage a landline long distance carrier simply because the call has crossed an arbitrary line. Maritel strongly proposes that to impose such boundaries would not serve the public interest, nor the advancement of innovative and efficient use of the spectrum.

## IV. Conclusion

Maritel proposes that equal access obligations only be imposed where a carrier exerts dominance in the market it serves. With respect to CMRS providers, Maritel asserts that only those CMRS operators owned by a long distance carrier or LEC, or one with cross-ownership interests with those entities, are capable of exerting such market dominance and therefore only those CMRS providers should be subject to equal access obligations. Maritel strongly opposes the adoption of service area boundaries or intraLATA-like areas for CMRS operators which would require the hand-off of long distance calls at arbitrary lines, regardless of the operating capabilities of the CMRS system. In all of these matters, Maritel believes that its Comments support the furtherance of the public interest in the advancement and continuance of innovative and improved use of the spectrum.

**WHEREFORE, THE PREMISES CONSIDERED,** Maritel hereby submits the foregoing Comments and urges the Federal Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

**Maritel**

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Dated: September 12th, 1994

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